



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Tom Graven  
County Auditor  
McLennan County  
Waco, Texas

Dear Sir:

Opinion No. 04405  
Re: District Clerk - Fees for contin-  
uances - Article 3927, V.A.C.S.

Your request for opinion has been received and  
carefully considered by this department. We quote from your  
request as follows:

"Article #3926 of the Revised Civil Statutes  
provides that a charge of twelve cents be made  
for each continuance in a case.

"I shall thank you to advise me whether or  
not, in your opinion, the clerk of a court is re-  
quired, as a matter of law, to assess the twelve  
cent court cost for each such continuances."

Article 3926, V.A.C.S., does not deal with your ques-  
tion and we presume that you intended to refer to Article 3927,  
which provides a twelve cent fee for continuances to District  
Clarks. Article 3920 provides a ten cent fee for county clerks  
for entering each continuance, except in estates."

Article 3927, V.A.C.S., reads in part as follows:

"The Clerks of the District Courts shall re-  
ceive the following fees in civil cases for their  
services:

". . . . .

"Each continuance . . . . . .12

". . . . ."

Article 3928a, V.A.C.S., reads as follows:

"In those counties where the District Clerk is compensated on a fee basis, the Clerk shall receive such fees and account for such as fees of office; and in those counties where the District Clerk is compensated on a salary basis, such fees shall be collected and paid into the officer's salary fund as now or hereafter provided by law."

Section 5 of Article 3912e, V.A.C.S., reads as follows:

"Sec. 5. It shall be the duty of all officers to charge and collect in the manner authorized by law all fees and commissions which are permitted by law to be assessed and collected for all official service performed by them. As and when such fees are collected they shall be deposited in the Officers' Salary Fund, or funds provided in this Act. In event the Commissioners' Court finds that the failure to collect any fee or commission was due to neglect on the part of the officer charged with the responsibility of collecting same, the amount of such fee or commission shall be deducted from the salary of such officer. Before any such deduction is made, the Commissioners' Court shall furnish such officer with an itemized statement of the uncollected fees with which his account is to be charged, and shall notify such officer of the time and place for a hearing on same, to determine whether such officer was guilty of negligence, which time for hearing shall be at least ten days subsequent to the date of notice. Unless an officer is charged by law with the responsibility of collecting fees, the Commissioners' Court shall not in any event make any deductions from the authorized salary of such officer."

McLennan County, Texas, has a population in excess of 20,000 inhabitants according to the 1940 Federal Census and its county officers are compensated on a salary basis.

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You are respectfully advised that it is the opinion of this department that it is the duty of the District Clerk to charge and collect a fee of twelve cents for each legal continuance of a cause from one term to another term of the court ordered or granted by the court. (This would not include a mere postponement of a cause during the term of court.) It is the further opinion of this department that it is the duty of the District Clerk of your county to charge and collect said fees and place same in the Officers' Salary Fund of your county.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

/signed/  
Wm. J. Fanning  
Assistant

WJF:GO

APPROVED FEB. 20, 1942  
/s/ Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS

APPROVED  
OPINION COMMITTEE  
By /s/ B.W.B., Chairman